

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of,

Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the telecommunications Act of 1996

Independent Payphone Association of New
York's Petition for Pre-Emption And
Declaratory Ruling Concerning refund Of
Payphone Line Rate Charges

Case No. CC Docket No. 96-128

REPLY COMMENTS OF NPCC AND
MINNESOTA INDEPENDENT
PAYPHONE ASSOCIATION IN
SUPPORT OF PETITION OF IPANY
FOR DECLARATORY RULING

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Dated: February 1, 2005

The Northwest Public Communications Council (“NPCC”) and the Minnesota Independent Payphone Association (“MIPA”) file these reply comments in support of the Petition of the Independent Payphone Association of New York (“IPANY”) (collectively “Association”). The Associations fully agree with the comments of Payphone Service Providers (“PSPs”) filing comments in this docket and fully disagree with the comments of RBOCs and the New York State Department of Public Service (“NYDPS”). The Associations concur with the reply comments filed by IPANY in this docket. Accordingly, rather than burden the record with repetitive arguments, the Associations file very limited and narrow reply comments.

Both the RBOC commenters¹ and the NYDPS assert that the decision of the New York Court of Appeals should have preclusive effect, preventing entry of a declaratory order as requested by IPANY, under the doctrines of res judicata or collateral estoppel. As discussed in the reply of IPANY, this argument is incorrect. The Associations wish to further note that regardless of what weight, if any, this Commission gives to the preclusion argument, there is still a crying need for the Commission to provide guidance to the states.

As a number of the PSP commenters in this docket over the last several months have pointed out, including the Associations in their prior comments, state implementation of the FCC’s payphone orders has been inconsistent. These proceedings are ongoing in a number of states, including Oregon.² Thus, the Commission should issue a declaratory order that clarifies the RBOCs are obligated to pay refunds to PSPs when the RBOCs have acknowledged or been found not to be in compliance with the new services test. A clarifying order should be issued

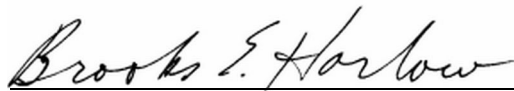
¹ Bell South Telecommunications, Inc., SBC Communications, Inc., and the Verizon Telephone Companies.

² See Associations’ comments filed January 18, 2005.

regardless of whether or not the Commission finds that it is procedurally in a position to preempt the New York Court of Appeals.³

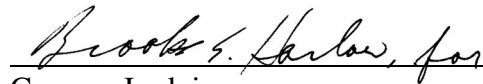
DATED this 1st day of February, 2005.

Respectfully submitted,



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³ To be clear, however, the Associations do support IPANY's request for preemption. Preemption is required by 47 U.S.C. § 276 and the supremacy clause of the U. S. Constitution.

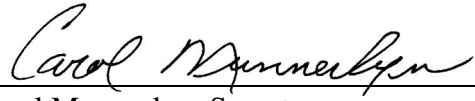
CERTIFICATE OF SERVICE
CC Docket 96-128

I hereby certify that I have this day caused to be mailed by U.S. Mail, postage prepaid a true and correct copy of the foregoing addressed to the following:

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Dated this 1st day of February, 2005.


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